

Before the Commissioner
Appointed by the Dunedin City Council

Under the Resource Management Act 1991 (**RMA**)

In the matter of an application by **Dunedin City Council** and the **Department of Conservation** for consent to construct and operate a carpark at Tunnel Beach, Dunedin

Dunedin City Council and Department of Conservation

Applicants

Memorandum of Counsel for the Applicants and Submitters

15 July 2022

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May it please the Commissioner:

- 1 The Applicants are very thankful for the further time that has been provided to enable them to work through the proposed conditions of consent with the Submitters. This has resulted in the Applicants reaching agreement with the Submitters. The implications of those agreements are:
- 2 The Submitters no longer oppose the position of the Applicants that section 4 RMA applies to the work of the Department of Conservation to establish and operate the track within the land owned by the Crown. In accordance with the submissions of the Applicant it is submitted that this section authorises work of the Crown to form and utilise the track on Crown land. It is submitted that the Commissioner can rely on this position being uncontested, and record that position reached in a decision should that be necessary. This means resource consent is not required for the track component of the project.
- 3 The Dunedin City Council offers the conditions attached to this memorandum and volunteers these being imposed on the resource consent for the car park. The Submitters do not oppose the imposition of these conditions which have been agreed on between the parties to resolve the Submitters concerns allowing it to amend its position from one of opposition to neutral.

The Conditions

- 4 Attached is a tracked and clean copy of the conditions. The tracking alters the conditions from the section 42A report discussed at the hearing. The explanation below comments on the changes tracked into the conditions and uses the numbering from the tracked version. The clean version tidies up the numbering.
- 5 Conditions 17-24 have been deleted because they are related to the track only and were intended in the event resource consent was found to have been required for that. This is not now the case, and these are unnecessary.
- 6 Condition 25(d) provides more detail on the Tunnel Beach car park operational plan that must be finalised and submitted to the resource consent manager for certification prior to operation of the car park.
- 7 Condition 25 a provides for a review of the operation plan 12 months from commencement and 3 years thereafter. This also now includes an obligation to consult the owner of 40 Tunnel Beach Road to seek feedback and consider that feedback when any reviews of the operation plan are carried out.

- 8 Conditions 26 and 29 provide more details for the landscape specification and landscape maintenance. These tie-in specification documents which are also attached, and provide the details of what is to be done in terms of plant establishment and maintenance.
- 9 Condition 27 a provides limits on bus movements to match the resource consent application (with respect to maximum hourly movements), and to provide an upper limit on bus passenger drop off and pick up movements (on a per week basis).
- 10 Conditions 32 and 33 provide for signage and no freedom camping being permitted within the car park.
- 11 Condition 34 addresses the possible removal of the macrocarpas marked on the diagram should they become a health and safety risk. Should they need to be removed in the future there is an obligation to replant the identified area with Ngaio within the next growing season.
- 12 Condition 35 addresses potential damage to the Submitters' right-of-way during construction or operation and maintenance of the car park.
- 13 An advice note has also been added to 'flag' to consent readers the corresponding agreement with DoC regarding the track and the nature of bus movements provided for by this consent.

Conclusion

- 14 As outlined above these conditions are offered by the Applicant in a form that are agreed with the Submitters to resolve their concerns. It is submitted that these conditions are appropriate, provide all parties certainty, and enable the car park to operate in a manner that manages effects to the extent that the Submitters no longer oppose the grant of the consent subject to these agreed conditions.
- 15 The Applicants look forward to hearing any comments that the section 42A report writer has relation to these conditions. Should there be no disagreement with them, then it is considered that it is appropriate for the final reply to be submitted in writing in accordance with the established timetable. It will then be for the Commissioner to consider that material.
- 16 Given these developments the Applicants consider that the Commissioner can properly consider the conditions, the section 42A report comments and the Applicants' reply in writing and make a decision on the papers which seems the most efficient way forward from here since all the evidence has been presented. The procedure can be decided on following lodgement of

the final reply. Should the Commissioner have questions on any of this material at that time, Counsel can be available to assist should that be necessary.

Dated this 15th day of July 2022



Michael Garbett
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Sam Eccles
Counsel for the Applicant, Department of Conservation.



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